In the High Court of Judicature at Madras

Dated: 01/11/2004

Coram

The Hon'ble Mr. Justice P.D.DINAKARAN
and
The Hon'ble Mr. Justice N.KANNADASAN

Writ Appeal No.47 of 2001

K.S.Ganapathya Pillai,
Managing Trustee,
Arupathu Moovar Annathana Chatram,
Tirunelveli Town. ... Appellant

-vs-

1. The Deputy Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli-2.

2. The Executive Officer,
Pillaiyan Kattalai,
Tirunelveli. ... Respondents

Appeal against the order of the learned single Judge dated 12.10.200 0
made in Writ Petition No.21075 of 1993.

!For Appellant : Mrs.Chithira Gomathy for
M/s.A.Sankarasubramanian

^For Respondent : Mr.D.Nandakumar,
Government Advocate.

:J U D G M E N T

(Judgment of the Court was delivered
by P.D.DINAKARAN, J.)
The appeal is directed against the order dated 12.10.2000 made in Writ Petition No.21075 of 1993 dismissing the writ petition filed by the appellant herein.

2. In brief, the appellant/writ petitioner made a challenge to the proceedings of the first respondent dated 21.11.1993, whereunder a disciplinary action was initiated against the petitioner under Section 5 3(1)(c) & (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the 'Act') for certain alleged misconducts

and irregularities and certain charges were framed thereunder. Consequently, by an even dated proceedings, the first respondent also appointed a Fit Person to manage the affairs of Arupathu Moovar Annathana Chathram, Tirunelveli. While the said proceedings dated 21.11.1993 were challenged by the appellant/writ petitioner, this Court granted interim stay in favour of the appellant/writ petitioner and the same was in force till the writ petition was dismissed by the learned single Judge, by an order dated 12.10.2000, giving liberty to the appellant/writ petitioner to give a written representation to the first respondent challenging the jurisdiction and directing the first respondent to pass appropriate orders on the same.

3. Aggrieved by the said order dated 12.10.2000, the writ petitioner/appellant has preferred the above writ appeal against the proceedings of the first respondent dated 21.11.1993, and this Court admitted the writ appeal on 17.01.2001 and granted interim stay, which was also subsequently made absolute by an order dated 11.08.2003. Hence, as on date, the proceedings dated 21.11.1993 initiated against the appellant/writ petitioner still continues to be under challenge on the ground of jurisdiction.

4. According to Ms.Chithira Gomathy, learned counsel appearing for the appellant/writ petitioner, the impugned Chatram is not coming within the purview of the Act at all and therefore, the question of initiating proceedings against the appellant/writ petitioner does not arise and consequently, the appointment of the Fit Person by even dated proceedings also suffers for want of jurisdiction.

5. Unfortunately, the learned Government Advocate is not in a position to satisfy this Court as to whether the impugned Chatram comes within the purview of the Act and the jurisdiction of the first respondent to pass the impugned proceedings dated 21.11.1993.

6. The learned counsel appearing for the appellant/writ petitioner draws our attention to Section 3 of the Act, which reads as follows:
Section 3: Power to extend Act to Charitable Endowments:- (1) Where the Government have reason to believe that any Hindu or Jain public charitable endowment is being mismanaged, they may direct the Commissioner to inquire, or to cause an inquiry to be made by any officer authorised by him in this behalf, into the affairs of such charitable endowment and to report to them whether, it is necessary to extend thereto all or any of the provisions of the Act and of any rules made thereunder.

7. According to the learned counsel for the appellant/writ petitioner, till date, no notice was served on the appellant/writ petitioner under Section 3 of the Act to bring the impugned Chatram within the purview of the Act and to issue the impugned proceedings dated 21.11.19 93 by the first respondent. Even this could not be answered by the learned Government Advocate.

8. Under the facts and circumstances of the case, we incline to pass the following order:

Before proceeding further on the impugned proceedings dated 21.11.19
93, the first respondent shall inquire into the charges framed thereunder and if the impugned Chatram has not been brought under the purview of the Act till date, issue a notice and pass appropriate orders under Section 3 of the Act, and immediately thereafter, shall continue with the impugned proceedings dated 21.11.1993, after getting explanation from the petitioner, within thirty days from the date of passing orders in the proceedings initiated under Section 3 of the Act and till then, the appointment of the Fit Person shall stand stayed. However, the appellant/writ petitioner shall not create any encumbrance in any manner to the properties of the impugned Chatram and shall maintain account with regard to the same, which shall be scrutinised subject to the finality in the proceedings initiated under Section 3 of the Act.

The writ petition is disposed of accordingly. No costs.

Index : Yes
Internet: Yes

ATR

To,

1. The Deputy Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli-2.

2. The Executive Officer,
Pillaiyan Kattalai,
Tirunelveli.